FILE COPY

OCT 23 19[illegible]

CHARLES E. MORE CR[illegible]
CL[illegible]

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929.

No. [redacted] 32

ANNA URAVIC, as administratrix of the goods, chattels and credits which were of Anton Uravic, deceased,

*Petitioner,*

*against*

F. JARKA COMPANY, INC. and UNITED AMERICAN LINE, INC.,

*Respondents.*

## BRIEF FOR RESPONDENT JARKA.

ERNIE ADAMSON,
*Counsel for Respondent,*
140 Nassau Street,
New York City, N. Y.

CHARLES WATSON RUSSELL, Printer

## TABLE OF CONTENTS.


PAGE

I.—Jurisdiction ..... 1

II.—Resume of Facts ..... 1

III.—Question Presented ..... 2

POINT I.—The Jones Act does not apply in the case at bar ..... 3

POINT II.—Petitioner fails to recognize the fact that the question of the relationship of employer and employee does not apply. It is the *Locus In Quo* that controls ..... 8

POINT III.—Petitioner erroneously states that the weight of authority is that Section 33 of the Merchant Marine Act of 1920 is applicable in the case of a longshoreman injured or killed on a foreign vessel lying in domestic waters ..... 9

FINAL POINT.—The judgment of the Court of Appeals and the judgment entered on its remittitur by the Supreme Court, Kings County, should be affirmed ..... 10

## TABLE OF CASES CITED.


PAGE

American Banana Co. *v.* United Fruit Co., 213 U. S. 347 ..... 3, 8
Atlantic Transport Co. *v.* Imbrovek, 234 U. S. 52 ..... 8
Clark *v.* Montezuma Transportation Co., 217 A. D. 172 ..... 5, 10
Engel *v.* Davenport, 271 U. S. 33 ..... 6
International Stevedoring Co. *v.* Haverty, 272 U. S. 50 ..... 3, 4, 6
Jackson *v.* Archimedes, 275 U. S. 463 ..... 3, 4, 6, 8
Nogueira *v.* N. Y., N. H. & H. R. R. Co., No. 248, October Term 1929 (Advance Opinions, No. 10, Page 448 ..... 6, 9
O'Reilly *v.* Cunard S. S. Co., decided June 20, 1928, (Not Reported) ..... 10
Pallon Tully T. Co. *v.* Turner, 269 Fed. 334 ... 10
Panama R. R. Co. *v.* Johnson, 264 U. S. 375 ... 6, 9, 10
Plamals *v.* Pinar del Rio, 16 Fed. (2) 985 ..... 5
Rainey *v.* N. Y. & P. S. Co., 216 Fed. 449 ..... 9, 10
Resigno *v.* Jarka, 248 N. Y. 225 ..... 2, 5, 10
Sandberg *v.* McDonald, 248 U. S. 185 ..... 6
State Industrial Commission *v.* Nordenholt Corp., 259 U. S. 50 ..... 8
The Falco, 20 Fed. (2) 362, 364 ..... 10
The Navarino, 7 Fed. (2) 743 ..... 5, 10
The Seirstad, 27 Fed. (2) 982 ..... 5, 10
Thompson Towing & Wrecking Ass'n *v.* McGreger, 207 Fed. 209 ..... 10
Wenzler *v.* Robin L. S. S. Co., 277 Fed. 812 ... 10

# Supreme Court of the United States

OCTOBER TERM, 1929—No. 581.

ANNA URAVIC, as administratrix of the goods, chattels and credits which were of Anton Uravic, deceased,

Petitioner,

AGAINST

F. JARKA COMPANY, INC., and UNITED AMERICAN LINE, INC.,

Respondents.

## BRIEF FOR RESPONDENT JARKA.

### I.

### Jurisdiction.

Petitioner is proceeding on a writ of certiorari to the Supreme Court of the State of New York, pursuant to the provisions of the United States Code, Title 28, Section 344 (b).

### II.

### Resume of Facts.

Plaintiff's intestate was an experienced longshoreman, 45 years old (fol. 79). On July 13th, 1926, while in the employ of the respondent Jarka on the Steamship "Hamburg," conceded by petitioner to be flying the

German flag (fol. 70), he was struck by a large case that was being conveyed from the hold of Hatch No. 2 by means of a block and fall operated by a winch while he was standing alongside of the hatch coaming, sustaining injuries which resulted in his death. After a trial before the Court and a Jury, the complaint was dismissed upon the merits, upon the ground that petitioner failed to make out a cause of action, upon which an order was entered (fol. 19).

The judgment was affirmed by the Appellate Division of the Supreme Court, Second Department, without opinion. An appeal was then taken to the Court of Appeals of the State of New York which resulted in an affirmance of the judgment of the Courts below. The Court of Appeals wrote no opinion, but by memorandum said: "On the authority of *Resigno* v. *Jarka*, 248 N. Y. 225."

As to the defendant United American Line, Inc., the action was discontinued.

The action was tried under the common law. The plaintiff alleged and her witness testified that the accident occurred through the negligence of a fellow servant (fol. 175).

The plaintiff attempted to invoke the Jones Act, but the accident having happened on the Steamship "Hamburg" flying the German flag, the Court ruled that the Jones Act did not apply (*Resigno* v. *Jarka*, 248 N. Y. 225).

## III.

## Question Presented.

This case presents the question, whether the Jones Act (Act of June 5, 1920, 41 Stat. C, 250, pp. 988, 1007, Section 33), as amended by the Merchant Marine Act of June 5, 1920, applies to a longshoreman injured on a vessel flying the flag of Germany.

## POINT I.

**The Jones Act does not apply in the case at bar.**

It is conceded by the petitioner that the Steamship "Hamburg," upon which the plaintiff's intestate was injured, is a German ship flying the German flag (fol. 70).

This Court in *International Stevedoring Co.* v. *Haverty*, 272 U. S. 50, decided that longshoremen were seamen, and that an American seaman injured on an American vessel is entitled to the benefits of the Jones Act.

Section 33 of the Merchant Marine Act of 1920 was an amendment of Section 20 of the Seaman's Act of March 4, 1915. The title of that Act was "An Act to Promote the Welfare of American Seamen in the Merchant Marine of the United States," etc. An analysis of this Act will demonstrate the intent and purpose of Congress as expressed in the title, was carried out in the various sections of the Act and whenever any provision was to apply to foreign vessels it was so made to apply by express provisions to that effect.

> *Jackson* v. *Archimedes*, 275 U. S. 463;
> *American Banana Co.* v. *United Fruit Co.*, 213 U. S. 347, 357.

The Merchant Marine Act of 1920 was entitled: "An Act to provide for the Promotion and Maintenance of the American Merchant Marine, to Repeal Certain Emergency Legislation and to Provide for the Disposition, Regulation and Use of Property Acquired Thereunder, and for Other Purposes"; and the first section of that Act stated and declared a policy of pro-

mote the "United States Merchant Marine and provide for the growth of our domestic and foreign commerce."

The first twenty-nine sections of this Act, together with the last five sections (35-39) relate only to the establishment of the United States Shipping Board, the modification of various laws on American shipbuilding expansion, the acquiring of ships by the United States, and certain definitions not involved in the present question.

Section 30 relates to ship mortgage reform and to a definition of "vessels of the United States."

Section 31 provides for the payment of part of the wages earned "by seamen on board a vessel of the United States, at ports where the vessel arrives." It is specifically provided that this section shall apply to seamen on foreign vessels while in United States ports.

Section 32 makes it unlawful "to pay any seaman" advance salary. This section by specific provision is made applicable "to foreign vessels while in United States waters."

*Jackson* v. *Archimedes* (*supra*).

Section 33 is the provision referred to in the decision in the case of *International Stevedoring Co.* v. *Haverty*, and no provision is made in said section for its application either to foreign seamen or foreign ships in United States waters or elsewhere.

Section 34 removes a restriction on the right of the United States to impose discriminating customs on imports entering into the United States in foreign vessels and in vessels of the United States.

From the foregoing it is clear that, upon the application of universally accepted rules of statutory construction, the general language of Section 33 of the

Jones Act could apply only to American seamen on American ships.

In the case of the *Plamals* v. *Pinar del Rio*, 16 Fed. (2) 985, the benefits of the Jones Act were claimed on the ground that at the time of the accident the vessel (British) was in an American port (Philadelphia). Judge GODDARD refused to apply the Jones Act.

In the *Navarino*, 7 Fed. (2) 743, the seaman was injured on a British vessel lying in this port. Judge CAMPBELL said:

> "Under that law (Jones Act) American law follows American ships into foreign waters, but that does not apply to foreign ships in American waters."

In *The Seirstad*, 27 Fed. (2d) 982, the seaman was injured on a Norwegian vessel lying in this port. The Court held:

> "The question here presented has been passed upon in *Clark* v. *Montezuma Transportation Company*, *supra*, and *Resigno* v. *F. Jarka Co.*, 248 N. Y. 225, 162 N. E. 13, decided by the Court of Appeals of the State of New York, May 29, 1928, both of which are actions in personam, and as *Clark* v. *Montezuma Transportation Company*, *supra*, has been cited with approval by our own Circuit Court of Appeals, and its doctrine affirmed by the State Court of Appeals, I feel constrained to hold, that, while the Congress undoubtedly had power to give the remedy of the Jones Act to any seaman who is injured within the territory of our waters, irrespective of the nationality of the vessel on which the injury is received, the provisions of section 33 of the Jones Act are limited to seamen at work upon domestic vessels."

The application of Section 33 to seamen engaged on foreign vessels might be said to be within the discretion of Congress, had Congress chosen to apply it.

> *Panama R. R. Co.* v. *Johnson*, 264 U. S. 375;
> *Jackson* v. *Archimedes* (*supra*).
> *Engel* v. *Davenport*, 271 U. S. 33;
> *Sandberg* v. *McDonald*, 248 U. S. 185;
> *Nogueira* v. *N. Y. N. H. & H. R. R. Co.*, No. 248, Oct. Term 1929 (Advance Opinions, No. 10, page 448).

It was not the intention of Congress to apply Section 33 to seamen injured upon a vessel in navigable waters registered under and flying the flag of a foreign country, and had Congress so intended, "a few words would have stated that intention, not leaving such an important regulation to be gathered from implication."

> *Sandberg* v. *McDonald*, 248 U. S. 185.

By the same reasoning, this Court said in the *Nogueira* case (*supra*) referring to the Longshoremen's and Harbor Workers' Compensation Act:

> "A special exception was added of the case of an employee of a common carrier by railroad when engaged in interstate or foreign commerce or commerce solely within the District of Columbia. The fact that a similar exception was left out of the Longshoremen's and Harbor Workers' Compensation Act and was inserted in the later statute works against, rather than for, the petitioner's contention."

In *International Stevedoring Co.* v. *Haverty*, 272 U. S. 50, this Court held:

> "The work upon which the plaintiff was engaged was a maritime service formerly rendered

> by the ship's crew. We cannot believe that Congress willingly would have allowed the protection to men engaged upon the same maritime duties to vary with the accident of their being employed by a stevedore rather than by the ship."

If a longshoreman becomes a seaman because he does the work formerly done by members of the crew, there can be no doubt that under Section 33 of the Merchant Marine Act of 1920, like Section 20 of the Act of 1915, must be limited to seamen at work upon domestic vessels.

**Seamen Defined.**

Section 4612 Revised Statutes (U. S. Comp. St. 1901, p. 3120) which also appears in 3 Masons U. S. Code Ann. of 1926, Title 46, Chapter 18, Section 713, P. 3279, defines a seaman as follows:

> "In the construction of this chapter, every person having the command of any vessel belonging to any citizen of the United States shall be deemed to be the 'Master' thereof; and every person (apprentices excepted) who shall be employed or engaged to serve in any capacity on board the same shall be deemed and taken to be a 'Seaman'," * * *

So that it conclusively appears by the language of Section 33 of the Jones Act referring to "any seaman who shall suffer personal injury" that the words "Any seaman" mean, as is defined in Section 4612 of the Revised Statutes, "*seamen employed upon a vessel belonging to a citizen of the United States.*"

It is apparent that Congress did not intend to give a remedy for injuries suffered on the high seas aboard a foreign vessel flying a foreign flag.

*Jackson* v. *Archimedes* (*supra*);
*American Banana Co.* v. *United Fruit Co.* (*supra*).

Plaintiff's intestate having been employed upon a foreign vessel not belonging to a citizen of the United States, the Jones Act could not under any stretch of the imagination apply.

## POINT II.

**The petitioner fails to recognize the fact that the question of the relationship of employer and employee does not apply. It is the *locus in quo* that controls.**

There can be no dispute that Uravic at the time of his death was engaged in the performance of a maritime contract. That, however, does not determine the question as to the place where the tort was committed.

In *State Industrial Commission* v. *Nordenholt Corp.*, 259 U. S. 50, this Court said:

> "In torts the rule is different. There, jurisdiction depends solely upon the place where the tort was committed, * * * *Atlantic Transport Co.* v. *Imbrovek*, 234 U. S. 52."
>
> "The general doctrine that in contract matters admiralty jurisdiction depends upon the nature of the transaction, *and in tort matters upon the locality, has been so frequently asserted by this Court that it must now be treated as settled*" (italics ours).

The petitioner seems to find some relief in the dissenting opinion of Judge Crane in the *Resigno* case, in which the Judge states:

> "This class of specialized workers connected with maritime service is to be covered by the Act

> of 1920 and included within its provisions; not merely those few members of the class who happen for the time being to be working on American ships. Stevedores and longshoremen would receive very little benefit from this Act of Congress were it so limited."

This Court, however, does not concur with that reasoning. In the *Nogueira* case, *supra*, this Court said:

> "The fact that the same employee of a Railroad Company may have different rights at different times is a familiar consequence of the application of different laws, as, for example, when the employee of a Railroad Company is engaged at one time in intrastate commerce and at another time, even on the same day, in interstate commerce; and the application of Federal Laws where the employment falls within the Federal jurisdiction is manifestly a matter within the discretion of Congress. *Panama R. R. Co.* v. *Johnson* (*supra*)."

## POINT III.

**Petitioner erroneously states that the weight of authority is that Section 33 of the Merchant Marine Act of 1920 is applicable in the case of a longshoreman injured or killed on a foreign vessel lying in domestic waters.**

The following is a list of cases holding contrary to the petitioner's contention:

> *Plamals* v. *Pinar del Rio* (C. C. A.) 16 Fed. (2), 984, affirmed by this Court, 277 U. S. 151, but without passing on the question;
> *Rainey* v. *N. Y. & P. S. Co.*, 216 Fed. 449;

*The Navarino*, 7 Fed. (2) 743;
*The Falco* (C. C. A.) 20 Fed. (2) 362, 364;
*O'Reilly* v. *Cunard S. S. Co.*, by Judge Bondy (not reported), decided June 20, 1928.
*The Seirstad*, 27 Fed. (2) 982;
*Resigno* v. *Jarka*, 248 N. Y. 225;
*Clark* v. *Montezuma*, 217 A. D. 172, cited with approval by the Circuit Court of Appeals, 2nd District in *Plamals* v. *Pinar del Rio* (*supra*).

Conversely an American seaman, on an American ship is entitled to the benefits of American law, even if injured in foreign waters.

*Thompson Towing & Wrecking Ass'n* v. *McGregor*, 207 Fed. 209;
*Rainey* v. *N. Y. P. & S. Co.* (*supra*);
*Pallon Tulley T. Co.* v. *Turner*, 269 Fed 334;
*Panama Co.* v. *Johnson*, 289 Fed. 964;
*Wenzler* v. *Robin L. S. S. Co.*, 277 Fed. 812.

## FINAL POINT.

**The judgment of the Court of Appeals and the judgment entered on its remittitur by the Supreme Court, Kings County, should be affirmed.**

Dated, N. Y., October 24, 1930.

Respectfully submitted,

ERNIE ADAMSON,
Counsel for Respondent,
140 Nassau Street,
New York City, N. Y.